

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MAI-ANH J. DOAN and DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION, ABILENE AIR TRAFFIC
CONTROL CENTER, Abilene, TX

*Docket No. 97-2773; Submitted on the Record;
Issued December 23, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether appellant sustained an emotional condition in the performance of duty causally related to factors of his federal employment.

On May 5, 1997 appellant, then a 31-year-old air traffic control specialist, filed a claim for compensation benefits alleging that he sustained an emotional condition on that date when two airplanes under his direction came into close proximity to one another. In an accompanying written statement, appellant stated that he lost confidence in his ability to perform his job as a result of the incident and also experienced stress.

An emergency room report noted that appellant had experienced a near-miss situation at work on May 5, 1997 and contained a diagnosis of post-traumatic stress syndrome. Medication was prescribed and stress management training was also recommended.

By decision dated July 17, 1997, the Office of Workers' Compensation Programs denied appellant's claim for compensation benefits on the grounds that the medical evidence failed to establish that he sustained a medical condition causally related to the incident on May 5, 1997.¹

The Board finds that this case is not in posture for a decision.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's

¹ Subsequent to issuance of the Office's July 17, 1997 decision, appellant submitted new evidence. As this evidence was not before the Office at the time it rendered its July 17, 1997 decision, the Board has no jurisdiction to review it for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

emotional reaction to his regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees' Compensation Act.² On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.³

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.⁴ If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.⁵

In this case, appellant alleged that he sustained an emotional condition as a result of an incident at work on May 5, 1997 when two aircrafts under his traffic control supervision came in close proximity. He stated that, although an investigation did not find him at fault regarding the incident, he lost confidence in his ability to perform his job. The Board has held that emotional reactions to situations, in which an employee is trying to meet his or her position requirements are compensable.⁶

In the present case, appellant has identified a compensable factor of employment with respect to the incident on May 5, 1997. However, appellant's burden of proof is not discharged by the fact that he has established an employment factor, which may give rise to a compensable disability under the Act. To establish his occupational disease claim for an emotional condition, appellant must also submit rationalized medical evidence establishing that he has an emotional or psychiatric disorder and that such disorder is causally related to the accepted compensable employment factor.⁷

In this case, the emergency room report related that appellant had experienced a near-miss situation on May 5, 1997, contained a diagnosis of post-traumatic stress syndrome and prescribed medication. While this report is not entirely sufficient to meet appellant's burden of

² 5 U.S.C. §§ 8101-8193.

³ See *Thomas D. McEuen*, 41 ECAB 387, 391 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ See *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992).

⁵ *Id.*

⁶ See *Georgia F. Kennedy*, 35 ECAB 1151, 1155 (1984); *Joseph A. Antal*, 34 ECAB 608, 612 (1983).

⁷ See *William P. George*, 43 ECAB 1159, 1168 (1992).

proof to establish his claim, it raises an uncontroverted inference between appellant's claimed condition and the employment incident of May 5, 1997, and is sufficient to require the Office to further develop the medical evidence and the case record.⁸

Accordingly, the case must be remanded to the Office for further evidentiary development regarding the issue of whether appellant sustained an employment-related injury on May 5, 1997. Upon remand of the case, the Office should prepare a statement of accepted facts and refer appellant, along with the case record and statement of accepted facts, to an appropriate medical specialist to determine what injury, if any, appellant sustained as a result of the incident on May 5, 1997, what type of treatment is recommended for the injury, and whether any disability occurred. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

The July 17, 1997 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision of the Board.

Dated, Washington, D.C.
December 23, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

⁸ See *John J. Carlone*, 41 ECAB 354, 358 (1989); *Robert A. Redmond*, 40 ECAB 796, 801 (1989).